Re KWONG ON CO. LTD.

[O. C. J. (Murray-Aynsley C.J.) March 22, 1949]

[Singapore — Companies Winding-Up No. 3 of 1948]

Companies — Private Companies — Winding-Up.

In this case a number of shareholders, who held minority shares in a private company, presented a petition for winding up on the ground that it was just and equitable that the company should be wound up. It was alleged that the minority shareholders were being excluded from the management of the company.

It was argued that the case came within the rule by which certain private companies were treated as partnerships for the purpose of winding up and winding-up orders were made in circumstances in which dissolution would be ordered in the case of partnerships.

Held: there was nothing to show that the majority had exceeded their legal rights in this case, and even if this was a case where partnership rule applied, the circumstances did not justify a winding up order.

Cases referred to:—

(1) *Yenidje Tobacco Co.* (1916) 2 Ch. 426.

(2) *Davis v. Collett* (1935) 1 Ch. 693.

COMPANIES WINDING-UP.

R. H. Green for the petitioners.

C. F. J. Ess for the respondents.

The facts sufficiently appear from the judgment.

Cur. Adv. Vult.

Murray-Aynsley C.J. : —This is a petition for the winding-up of a private company called Kwong On Co. Ltd. The history of the company appears to have been as follows: For some years a "chop" had been carrying on business with many more than the permissible number of partners. The question of registration under the law providing for the registration of business names seems to have caused the persons in charge to take steps for the conversion shares in proportion to their interest in the "chop". A difficulty arose because a number of partners in the "chop" were in China and could not be communicated with. Finally when shares were allotted in 1943 the shares of such partners were allotted to one Chan Chee who was the owner of the largest interest in the "chop" ($9,500 out of $32,000). The result of this was that Chan Chee was the registered owner of 440 out of 700 shares in the company. It is alleged that he was only a trustee as regards 190 of his shares, but the articles provide in the usual way as to the non-recognition of trusts so that any question of beneficial interest would be a matter on which the equitable owners might take action, but it does not appear to be relevant to the present proceedings. The result of the allocation of these shares to Chan Chee was to cause him to have a controlling interest in the company.

The present petitioners are the registered owners of the shares other than those allotted to or acquired by Chan Chee.

The company has carried on business since its incorporation and still does so profitably.

On 29th January, 1945, Chan Chee died and his shares were transferred under the terms of his will to Chan Wah Ngoh, Chan Wah Thai and Chan Soon Mun in the proportion of 2 : 2 : 1.

Since then trouble seems to have occurred between the successors in title of Chan Chee, who seems to have voted as a bloc, and the minority shareholders who are now either petitioners or supporters of the petition.

Matters seem to have come to a head at the annual general meeting held on 12th May, 1946, when resolutions were passed by what may be called the Chan Chee votes, reducing the number of directors and increasing the qualification from ten to twenty shares. The result of this was that three of the petitioners, viz: Chan Chung, Tong Chan Fai and Choong Woon Cheong, became unqualified and ceased to be directors.

Subsequently, in October of last year, this petition was presented and the petitioners can only allege that it is just and equitable that the company should be wound up. Certain specific allegations are made against certain of the present directors but I do not regard any of them as proved. The petitioners also seek to bring the case within the rule of the *Yenidje Tobacco Co.*[1] by which certain private companies are, for the purpose of winding-up, treated as partnerships, that is to say, winding-up orders are made in circumstances in which dissolution would be ordered in the case of partnerships.

I am not at all satisfied that this is the sort of company to which the rule in the *Yenidje Tobacco Co.*[1] applies. The rule applies to what Crossman J. in the case of *Davis v. Collett*[2] called private companies in the fullest possible sense. This seems to mean companies with very few shareholders, and directors upon whose harmonious relations the functioning of the company depends. In the present case there seem to be fourteen different shareholders and no fewer than seven directors. Even if this were a case where partnership rule applied I do not consider that the

circumstances are such as to justify a winding-up order. The majority of the cases of this sort where a winding-up has been ordered are deadlock cases. Here the trouble is the other way round, the majority bloc can do too much what they like.

The ground on which winding-up is sought is that the minority shareholders are being excluded from the management of the company. This is evidenced by the action of the majority in reducing the number of directors and increasing their qualifications. I do not think that the majority have exceeded their legal rights. Shareholders, when they vote, are entitled to consult their own interests and it would be a strange thing if they could not. They are not trustees of the other shareholders. Matters relating to the election of directors are very much within the rights of shareholders.

I think that the petition should be dismissed with costs.

Petition dismissed.

Solicitors: *Braddell Bros.; R. C. H. Lim & Co.*

OW KONG v. CHEANG KWONG YEN

[A. C. J. (Storr J.) April 2, 1949]

[Ipoh — Civil Appeal No. 12 of 1948]

Landlord and Tenant — Voluntary payment of rent by sub-tenant to superior landlord — Action by immediate landlord to recover possession and arrears of rent.

This was an appeal against the order of the learned District Judge, Perak, who gave possession of the premises in question to the respondent. It appeared that the appellant was a sub-tenant of the respondent and had paid the rent to the landlord after receipt of a letter from the landlord that the respondent was no longer the chief tenant of the premises. The respondent made several demands for payment of the rent and subsequently brought proceedings to recover possession and the arrears of rent.

Held: (1) where the payment to the superior landlord is a voluntary payment and not a compulsory one, then that payment cannot be treated as a set-off or as payment of the rent due; (2) therefore in this case the respondent was entitled to the order for possession and the appeal must be dismissed.

Cases referred to:—

(1) *Jones & Anor. v. Morris* 154 E.R. 1044.

(2) *Graham & Ors. Assignees v. Allsopp* 18 L.J. Ex. 85.

(3) *Sapsford v. Fletcher* 100 E.R. 1147.

(4) *Taylor v. Zamira* 128 E.R. 1138.

(5) *Carter v. Carter* 130 E.R. 1118.

CIVIL APPEAL.

S. M. Sharma for the appellant.

Tan Cheng Hock for the respondent.

Storr J.: — This was an appeal from the Order of the learned District Judge, Perak South, dated 25th August, 1948.

Mr. Sharma appeared for the appellant, and Mr. Tan Cheng Hock for the respondent.

The facts briefly are that the respondent rented the premises, No. 52 Hume Street, from the Chin Sem Lim & Sons Loan and Savings Co. Ltd. of Brewster Road, Ipoh, at a rental of $36 per month. One T. S. Chin acted as agent for the company at the time the tenancy was granted. The appellant became the sub-tenant of respondent occupying the upstairs room and paying a rent of $30 per month as from the 15th December, 1946. The appellant paid the rent regularly up to 20th December, 1947, and has not paid any rent to the respondent since. In October, 1947, the respondent received a letter from Messrs. Cheang Lee & Ong, Solicitors, informing him that the company, his landlord, had transferred the premises to Chin Thin Sin and that as from the 1st October, 1947, he should pay the rent to him. On the 10th November, 1947, Chin Thin Sin, now the superior landlord, gave notice to the appellant that as from the 1st January, 1948, he should pay his rent for the first floor of 52 Hume Street to him, as the respondent was no longer the chief tenant of the premises. It should be noted that there is not in that letter any threat of levying distress or any way interfering with the peaceful occupation of the appellant of the upstairs portion of 52 Hume Street. Without apparently taking any trouble to ascertain from the respondent if, in fact, he had given up the tenancy, the appellant commenced and continued henceforth to pay his rents to the said Chin Thin Sin. The respondent made several demands to the appellant on the premises for the rent, but was told that it was being paid to the said Chin Thin Sin. As he could get no satisfaction from the appellant, he commenced proceedings for arrears of rent and ejectment before the learned District Judge, Perak South, on 7th June, 1948, The learned District Judge originally heard the case on the 9th July, 1948, but on Mr. Sharma applying on behalf of the appellant for a review re-heard it on the 25th August, 1948, when he made an Order as prayed for in the Plaint, i.e.